

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5474**

1. Opening of Meeting:

The Appeals Board convened at 10:30, October 10, 2006 in Sacramento, with Chair Ann M. Richardson presiding.

2. Roll Call: Members

Present

Absent

Ann Richardson, Chair

X

Virginia Strom-Martin

X

Jack Cox

X

Don Novey

X

Terri Carbaugh

X

3. Approval of the Minutes:

The September 12, 2006 minutes were approved by all members.

4. Chair's Report:

Chair Richardson reported that she was very pleased that the PALJ salary differential memo went over to the Department of Personnel Administration (DPA) and that we hope to hear back from them soon. Labor Agency was given the opportunity to comment on the memo before it was sent, but made no changes or comments.

Chair Richardson mentioned that on Sunday she participated in the Foster Youth Fashion Show, which involves foster youth who are about to emancipate from the Sacramento County, and that it was a quite a success.

5. Board Member Reports:

Board Member Carbaugh reported that she attended the Governor and First Lady's Women's Conference at the end of September in Southern California and that it was an amazing conference. She would encourage anyone, who gets the opportunity, to participate in the conference.

Chair Richardson noted that there was participation by some state agencies at the conference, and that the CUIAB may benefit from attending and having a booth at future conferences. Member Carbaugh will look into this for us for next year.

Chief Administrative Law Judge/Executive Director's Report:

Executive Director/Chief Administrative Law Judge Jay Arcellana reported, as a follow up on the Chair's report regarding the PALJ differential, that the PALJs were very enthusiastic about receiving word of the memo and that it was a big morale boost for them. They are pleased that the Board is supportive of their need for increased pay as a means to enhance recruitment and retention efforts.

Chief Arcellana reported that the PALJ exam is proceeding, with a final filing date this week, but unfortunately the number of applications is still somewhat low. The last PALJ exam had just 16 applications, and to date for this exam they have received only 11 applications. However, more applications are likely to come in toward the end of the filing period.

Chief Arcellana further reported that Deputy Chief ALJ, Appellate Operations Steve Angelides and twelve other CUIAB staff participated in the recent ALRB elections. He noted that it was on very short notice and was a good effort by CUIAB.

Chief Arcellana reported that CUIAB and EDD had submitted a request for a grant from the Department of Labor (DOL) for an automation augmentation for data security. The DOL awarded California \$200,000 on that request, and it has just been worked out that the grant will be split evenly between EDD and the CUIAB.

Chief Arcellana reported that budget process for fiscal year 07-08 has already begun. He stated it is at this time of year that EDD asks us for a listing of capitalized equipment that needs to be purchased. This year we have requested 22 copiers, 12 servers and one card reader system, at a cost of 1.3 million. We also made a request to continue our contracts with the State Personnel Board (SPB), the Controller's Office, and the Teale Data Center, amounting to around \$86,500.

Chief Arcellana also reported that Tim McArdle went back to Mississippi to train 15 hearing officers on ethics and decision writing. Upon completion of the course they were sworn in as administrative law judges in a ceremony at the state capitol. Chief Arcellana noted that Tim, once again, represented California very well.

Chief Arcellana commented that from the field operations perspective the PALJ meeting was the highlight of last month, particularly inasmuch as it was the first PALJ meeting in about one year. Chair Richardson was able to attend the majority of the meeting and Board Member Carbaugh came by to say hello. In addition, Pat O'Neil from the DOL attended the entire meeting.

Chair Richardson encouraged any Board Member who wants to attend future PALJ meetings. The meeting was very informative with regard to field needs, workload, staffing, and organization. Chair Richardson stated she plans on attending the PALJ meetings as often as she can.

Chief Arcellana said Pat O'Neil commented that many of CUIAB's offices are much larger than the entire operations of many states. So, the magnitude is overwhelming and Pat O'Neil was very complimentary about how CUIAB manages our workload and budget. Mr. O'Neil also commended the agency on its quality review efforts. Chief Arcellana commented that Mr. O'Neil has been a very good advocate for CUIAB back in Washington, and was very pleased that Mr. O'Neil took the time to attend our the PALJ meeting.

Chief Arcellana continued to report, regarding the PALJ meeting, that every office had the opportunity to outline their needs, and the recurring theme is the need for more staff. Another topic of importance to the PALJs is quality review. Currently, the PALJs conduct their own internal quality review. The agency is going to conduct a pilot wherein a team of two or three reviewers will be responsible for the quality review of at least four offices. We are looking for consistency in scoring, and relief so that the PALJs can spend more time managing staff issues.

Chief Arcellana reported that facilities issues were also discussed. The Fresno office will be relocated within the year, and Oxnard and San Diego offices likely be relocated as well. The Los Angeles office has indicated a desire to get out of the state building. Another significant issue discussed was the potential for going paperless, particularly in view of the impending loss of postal privileges. A team of PALJ and other staff will be formed to study this possibility.

Finally, Chief Arcellana reported that he did get a chance to visit the Pasadena office. The building has been completely remodeled inside and out, with two hearing rooms added, installation of a keyless entry system, and the reception point has been completely redone and is much more user friendly. Staff is very happy with the changes.

7. Branch Reports:

a. Chief Arcellana reported generally on the workload budget, since PALJ Hugh Harrison would be giving the in-depth quarterly report later. Chief Arcellana noted we are a quarter into the fiscal year and the numbers are not coming out the way he expected. The October revise shows a decrease, our own numbers show something different, and Pat O'Neil stated during the PALJ meeting that he expected an increase in workload. There are still some uncertainties with respect to how the salary increases will be funded, and we are experiencing a lot of increased cost in facilities and automation projects.

Chair Richardson commended Chief Arcellana for all of his work at the PALJ meeting and expressed her appreciation for all that he does for the agency. She also expressed her appreciation to Deputy Chief ALJ, Appellate Operations Steve Angelides for all his hard work with the ALRB elections, especially given such short notice. Lastly, she expressed her appreciation to Tim McArdle for representing the CUIAB out of state and for the outstanding job done.

Administrative Law Judge (ALJ) Hugh Harrison proceeded with the workload report. He referred to a packet of material setting forth the numbers for last month and the last two quarters. He reported the UI verifications for September was the lowest since February. The significance of that is not so much that they went down but that they were so high the previous four or five months. He stated the July through September quarter, except for the April through June quarter, was the highest quarter intake in the last two years. Those two quarters together, while still below the levels we were at two, three and four years ago, are significantly higher than they have been for the last two years. He stated that hopefully September will be a move downward for a while, but we don't know. For the year unemployment verifications are up 11 percent from the previous year. The out-flow seems to go up and down more or less in pattern with the in-flow; therefore, the dispositions were also lower than average for the year but are up approximately 16 percent from what the agency was dealing with last year on an average. In the April through June quarter there was a large surplus of dispositions and in the July through September quarter there was a large deficit of dispositions as it relates to UI. In June the agency made a big push for budgetary reasons, and in July and August we changed our focus back to a more normal arrangement; however, in July we concentrated very heavily on DI resulting notably in the DI situation being exactly opposite of the UI in those two quarters. All programs now are basically back where they were in May and unemployment is almost exactly where it was at the beginning of the year.

PALJ Harrison went on to report that even though the number of open cases has been growing since June the offices have maintained timely dispositions, averaging 97-98 percent of the decisions out within 90 days, which meets the Federal standard. If this intake continues, production will have to be increased and that we are looking into new hires and/or possibly a caseload increase, to be considered in the context of the budget. The agency is in the middle of the October revise process, and the preliminary figures from the Department are showing close to a \$2,000,000 drop in current year budget through the October revise. Last time in the May revise the Governor's final numbers were actually a bigger cut than what EDD had indicated, as a result they are unsure what that number will be. In addition we may need to contend with the cost of the staff pay raises, in the amount of approximately \$1.6 million. EDD has submitted to Department of Finance a request to have those cost-of-living increases budgeted as for non-federally funded agencies. Those two factors, the October revise and the pay increase, are going to impact the agency's capacity to ramp up staff in any significant factor if we have to cover both of them. PALJ Harrison also noted the ongoing facilities costs, which always get more, not less, expensive; so we are constantly looking at that to determine how the agency can maximize its lease dollars while not reducing service to the public.

Member Carbaugh wanted to know who is telling the agency that the October revise is showing 2 million dollars less than originally budgeted, the Department of Finance or EDD.

PALJ Harrison responded that EDD has staff that tries to determine what the future workload will be and then EDD sends the agency preliminary figures and we respond. He noted that in the past we have had issues with EDD's estimate largely based on the fact that for two possibly three years EDD did not understand the impact of splits. He went on to report that this time EDD's estimates appear sound, as they are now accustomed to factoring in splits. He noted that 90 percent of the agency's funding comes from DOL, and we have an agreement with EDD on how that money is divided.

Chair Richardson inquired, with respect to facilities, what is the longest term lease the agency currently has.

PALJ Harrison responded that the longest term lease is perpetuity in a DGS building unless the agency finds someone to assume the space. We had two state building facilities in Fresno for about ten years before we could find a subtenant. We were able to get out of the state building in Van Nuys only by stating the agency would not continue to have a presence in the valley. As to private leases, generally we have committed to a four-year term firm, except for headquarters, which is an eight-year term firm.

Member Carbaugh requested clarification in terms of the projections, questioning whether it is driven based upon the agency's rate of processing cases as opposed to the unemployment numbers.

PALJ Harrison responded that they look at that too, but the agency's budget as far as federal is concerned is strictly based on numbers, and EDD looks at a wide variety of things in determining what they expect the numbers to be. PALJ Harrison indicated that he is confident the disability cuts will happen due to the downward trend over the years in the disability caseload. The agency has gone from averaging 2,200 to 2,300 cases a month in the field to averaging 1,700 to 1,800 a month over the last five years.

Finally, PALJ Harrison reported that they just received a heads-up from Pat O'Neil that DOL has finally made a decision on the proposal for average case aging standards, and for the field DOL's proposal will be 30 days. The process is that DOL will publish a report and proposal, and then the states will have an opportunity to comment, and then the standards will be finalized. The new standard will not become effective until federal fiscal year '07-'08. CUIAB has been averaging 33 days this year, excluding January, and over the last eight month 32 days. PALJ Harrison reported that he is fully confident that the agency will be able to meet this standard.

b. Deputy Chief ALJ, Appellate Operations Steve Angelides reported that after registrations spiked in July due to the increased production in the field in June, and returned to normal in August, registrations dipped below normal in September to 1,114, which is 83% of the calendar year average. Dispositions also dipped, to 1,051, which is 78% of the calendar year average, due to the ALJ resources being devoted to special projects and the courier cases. He noted that as a result AO's

balance of open cases stayed about the same, 2,301, which is 95% of the calendar year average.

Deputy Chief ALJ Angelides reported that AO's average unemployment case age in September was 40 days, which was also their average so far this calendar year. He noted AO just received word from the U.S. Department of Labor that they may be considering an average case age standard of 40 days for higher authority. He expressed concern that AO would have difficulty meeting the standard of 40 days; however, felt comfortable AO could meet a standard of 45 days which was previously mentioned and suggested that the agency submit a comment with respect to higher authority.

Deputy Chief ALJ Angelides reported that the number of pages of transcripts typed in CTU returned to around 7,500 in September. He noted that as a result from time to time CTU had been able to loan typists to AO to help with decision typing, which had been helpful due to the shortage of support staff in AO.

Deputy Chief ALJ Angelides reported that AO is continuing to use retired ALJ's Linda Shepard and Tamara Pierson and will begin utilizing retired ALJ Fine also. Chair Richardson inquired if AO would be using ALJ Fine for tax cases or for other cases. Deputy Chief ALJ, Appellate Operations Steve Angelides responded that AO would be using ALJ Fine for tax cases and other cases as well; however, not the same kind of tax cases ALJ Fine would be working on for FOHQ.

Deputy Chief ALJ Angelides reported that last week he participated in the digital recording training in Fresno. The training was well-received and everyone is learning the process well. There are only four offices left to train, so that by the end of November all of the agency's hearings will be digitally recorded, and by the end of the year AO should not be seeing any more tapes.

Deputy Chief ALJ Angelides went on to report that the week before last he, along with 12 other volunteers from CUIAB, at the request of the Labor Agency, assisted the Agricultural Labor Relations Board (ALRB) with an election in the Visalia area. The Labor Agency was very pleased with CUIAB's participation. He reported that they worked and traveled long hours, but it was a rewarding and educational experience for all of them.

Deputy Chief ALJ Angelides also reported that on September 28, AO had their regular bi-monthly ALJ meeting. One of the highlights of that meeting was training on the first comprehensive revision of the Board paragraphs in 7 years. The Board paragraph committee, led by ALJ Pat Poyner, and including ALJ's Emma Castillo, Nancy Kirk, and Shelley Mydans, did an outstanding job and made a permanent contribution to CUIAB.

Other events and items of significance reported by Deputy Chief ALJ Angelides were: the potential precedent decision on jurisdiction and notice is now ready for consideration by the Board; AO and IT are continuing to work together to address CATS issues relating to submission dates, and no new decisions have gone out

prematurely; AO has completed work on a single attachment for Board tax decisions, which should avoid the problems we had with sending the wrong attachment to the parties; and, Deputy Chief ALJ Angelides is leading up a committee to make the standard paragraphs, decisions, and precedent decisions available electronically.

Finally, Deputy Chief ALJ Angelides reported that on the social scene, many of the AO ALJ's were unable to attend ALJ Jeff Fine's official retirement party, so they took him out for an informal retirement lunch after AO's meeting last month.

Member Carbaugh questioned, regarding the precedent and other cases they are working on, if there are any efforts on upgrading the webpage to make it more consumer friendly. She stated that possibly this could be helpful in some way to speed up the case processing and reduce the caseload time frame.

Executive Director/Chief Administrative Law Judge Jay Arcellana responded that they are looking into this and that CUIAB's webmaster has just returned to the agency and is working on upgrading the webpage. He promised to speak with him regarding her specific question. Chair Richardson asked Member Carbaugh if she would like to participate in the upgrading of the webpage, to which Member Carbaugh responded affirmatively.

Mr. Nick Dressler of IT stated that within the next year there will be many changes to the current webpage and that there is a big push to change the "My California Look" and make it friendlier for the visional impaired and so forth.

Member Strom-Martin stated when she got the notice for assistance with the ALRB elections she wanted to attend, but the notice was just too short to allow her to adjust her schedule. Member Strom-Martin congratulated Deputy Chief ALJ, Angelides and the agency for having so many volunteers and for a job well done, and requested to be notified next time workers are needed, which Chair Richardson seconded on her behalf.

c. Deputy Director, Administrative Services Branch Pam Boston reported that she was pleased to announce that the Information Technology Services unit recently upgraded the internet line coming into Sacramento, which will decrease the bottleneck for the out stations coming into Sacramento.

Deputy Director Boston also reported that last year the United States Postal Service adopted a plan that they called the Secure Postage Meter Technology. This plan requires all agencies to replace their current mail meters with digital machines no later than December '06. EDD completed the contract process, and the contract was awarded to Pitney Bowes. CUIAB will be receiving the new mail machines around October 19, 2006.

Chair Richardson inquired how the new machines differ from the current machines. Deputy Director Boston replied that the new machines are digital and that the stamp can be used so you can actually track each individual piece of mail.

Deputy Director Boston reported that on September 14th CUIAB participated in the American Heart Walk Association with about 20 walkers, raising just over \$2,000. She thanked those who walked and participated in this worthy cause.

Deputy Director Boston reported that the retro and bonus checks were issued by the State Controllers Office (SCO) around September 26. She thanked Personnel for getting the checks out early, indicating that the checks did come in on a Friday and Personnel acted quickly to get those checks to the individuals.

Deputy Director Boston reported that Susan Williams of Personnel will be providing attendance clerk training to three of the agency's field offices, San Diego, Los Angeles and Oxnard. She stated requests for such training are not infrequent because of the high turnover of attendance clerk staff, and Susan Williams is an excellent person to provide the training.

Finally, Deputy Director Boston reported that Madonna Harden recently accepted a position in the agency's Procurement Unit, coming out of Appellate Operations, and Rose Short was promoted from within Business Services to an Associate Business Management Analyst.

d. Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported that data classification workshops are being conducted to begin the agency-wide classification effort discussed at the last Board meeting. A representative from each office attends the training, which is being presented by Michelle Robinson and Nancy Pacheco of the PP & M Branch.

Deputy Director Walton-Simons reported that this month is National Cyber Security Awareness Month, and that Michelle Robinson, Information Security Officer, has organized six lunchtime workshops for all Venture Oaks employees. The workshop last week was on the Password Challenge and co-presented with Josh Perkins of the IT Division, and there will be a workshop today on Identity Theft and Privacy Protection, with an outside presenter.

Deputy Director Walton-Simons reported that the Fresno digital rollout occurred on October 4th and 5th and that it went very well. San Jose Office of Appeals will receive the rollout next week. P&PM Manager Ralyne Long is assisting with the rollouts.

Deputy Director Walton-Simons stated she is pleased to announce that the P&PM Branch filled its Staff Service Analyst vacancy in the Orange County area with Alfredo Garcia, a former Management Services Technician with the Pasadena Office of Appeals. Mr. Garcia followed all the guidelines and steps required by the Upward Mobility Plan, and he is their first successful candidate under this program.

Finally, Deputy Director Walton-Simons reported that the P&PM Branch had three volunteers, Aristeed Powell, Mirella Vasquez and Alfredo Garcia, that worked on the ALRB elections.

8. Chief Counsel's Report:

Chief Counsel Ralph Hilton reported that last month the agency received ten court cases, the most new cases received in one month since he started. Notably, three of the new cases involve courier businesses. The numerous courier cases the field has been dealing with during the last year or two are now working their way through our system and into court. There was one other interesting case in which the petitioner is requesting prejudgment interest on benefits awarded in another court proceeding. Since that is strictly an EDD issue the CUIAB has asked that the Attorney General's Office move to have the Board dismissed from the action. There was just one case closed last month, in which the Superior Court reversed the Board decision, as it assessed the facts of the case differently than the Board.

Chief Counsel Hilton reported with regard to workload that it was definitely lighter than in August because, as Deputy Chief ALJ, Appellate Operations Steve Angelides reported, the workload in AO was down a bit.

Chief Counsel Hilton reported that there is a new Federal Rule adopted. The proposed rule was first published in 1992, relating to confidentiality of records, and providing that all information submitted by claimants and employers must be considered confidential. As to appeals board records, however, there is no controlling rule at the federal level. Although DOL encourages the states to conduct open and public appeals hearings, that decision is left up to each state, and in fact most states' appeals hearings are a matter of public record in the tradition of all judicial proceedings to ensure fairness in the judicial process. The new rule is effective October 27, 2006.

Chair Richardson inquired if that would change the way the CUIAB handles files.

Chief Counsel Ralph Hilton responded that it would not change anything for California, as this state has always had has strict confidentiality statutes concerning claims records, until they reach the appellate level, at which point California follows the DOL recommendations for public proceedings. Our rules do provide for closing those proceedings under special circumstances, and in any event social security numbers and employer identification numbers may never be divulged.

9. Unfinished & New Business:

Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported on the Hearing Information Pamphlets. Previously Deputy Director Walton-Simons had reported on the results of a customer survey. Based partially upon that survey, a committee was formed to rewrite the pamphlet and reduce the grade reading level required, which was at the 12th grade level. The committee

received a lot of input, and in the end, CUIAB has a greatly improved publication. The readability of the document is now at just below the 6th grade level, and the font size is now 9.5 of instead of the 4.5 font size of the old pamphlet; all of the information is set forth on just one side, so that the Spanish version can be placed on the back side, eliminating the need for two separate information pamphlets; now included in the pamphlet is EDD's UI and DI phone numbers, with the TTY number and a Spanish language number. A separate pamphlet for tax hearings will also be developed, one for hearings out of field operations and another for hearings out of Tax Headquarters.

Chair Richardson expressed her appreciation and indicated she thought the pamphlet turned out to be a wonderful work product.

10. Public Comment:

There was no public comment.

11. Closed Session:

The regularly scheduled Board meeting adjourned, and the Board went into closed session. No votes were reported in closed session.